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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,609	03/30/2004	Paul Re	H-US-01403CON	3229
50855 7590 11/24/2009 Tyco Healthcare Group LP 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473				
EXAMINER				
BACHMAN, LINDSEY MICHELLE				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
11/24/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/812,609

**Applicant(s)**

RE ET AL.

**Examiner**

LINDSEY BACHMAN

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 9, 16, 17 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 9, 16, 17 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is in response to Applicant's amendment filed 11 August 2009.

#### ***Response to Arguments***

Applicant's arguments filed 12 August 2009 have been fully considered but they are not persuasive.

Applicant argues that the combination of Small'499, which is used to teach a channel passing through substantially the length of the elongated leg structure, with Mulhauser'772 and Frey'328 is not proper because Small'499 is a screw and the channel is used to engage the Small'499 device with a deployment device that is used to rotate the Small'499 device into engagement with body tissue. Mulhauser'772 and Frey'328, on the other hand, engage body tissue by pressing or pushing. This argument is not persuasive because a channel makes it easier to for a deployment tool to engage with the device, regardless of if the device is deployed by rotating it into tissue or pressing it into tissue. For example, Frey'328's device contains a channel 11 that is used to engage with a deployment device that pushes the device into body tissue. Creating a larger channel, such as the one taught by Small'499 rather than a shallow channel taught by Frey'828, allows the deployment device to more securely engage with the device being deployed.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's disclosure does not disclose that the channels (30) are tapered.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 3, 9, 16, 17 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulhauser, et al. (US Patent 6,267,772) in view of Frey et al. (US Patent 4,776,328) and Small et al. (US Patent 5,139,499).**

Claims 1 and 3: Mulhauser'772 teaches a tissue repair device (10) containing a body containing an annular frame portion (14) and an integral, solid cover portion (12; column 4, lines 51-59) disposed within the frame portion (see side view in Figure 2b). Further, the device contains legs or anchors (22). Mulhauser'722 teaches that the cover portion can be bowed proximally (column 3, lines 60-61). Mulahauser'772 does not teach that the legs are several times longer than the thickness of the body, are generally conical or that the legs contain central channels.

Frey teaches that it is known to provide anchors that are substantially longer in order to provide a stronger connection with the tissue. Further, Frey teaches that the anchors can be substantially conically shaped in order to prevent migration of the leg out of the tissue. It would have been obvious to one of ordinary skill in the art to modify the device taught by Mulhauser'772 so that it too has these advantages.

Mulhauser in view of Frey does not teach a leg or anchor with a central channel that extends substantially the length of the leg or anchor.

Small'499 teaches that it is old and well known to provide an anchor with a central channel (26) in order to engage with a delivery device (Figure 3). It would have been obvious to one of ordinary skill in the art to modify the device of Mulhauser in view of Frey with the teachings of Small so that it too has this advantage.

Claim 9: Mulhauser'772 teaches attaching the cover to the frame using insert molding (column 4, lines 26-34).

Claim 16: Mulhauser'772 teaches that the fabric can be made of absorbable material (column 4, lines 35-51).

Claim 17: Mulhauser'772 teaches that the cover can be a material which promotes cell growth (column 4, lines 35-51).

Claim 21: Mulhauser'772 in view of Frey'328 in view of Small'499 teach a channel, but do not teach a channel that is tapered. Small'499 teaches that the channel is shaped to engage with a deployment tool. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to change the shape of the channel on the object being deployed because Applicant

has not disclosed that shaping the channel a particular way provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected both channels to perform equally as well with either shape, considering a deployment tool engagement portion is shaped the same as the channel.

Claim 20: Mulhauser'772 teaches a method of repairing a cartilage defect that includes providing a body for disposition against a bone with a defect in which the device contains elongated leg structures (22) for disposition into the bone and bring the distal surface of the device into contact with the bone (column 7, lines 13-35 and column 3, lines 39-41). Mulhauser'722 teaches that the solid, cover portion (12; column 4, lines 51-59) can be bowed proximally (column 3, lines 60-61). Mulhauser'772 does not teach that the legs are several times larger than the thickness of the body, nor do the legs contain central channels that extend partially through the legs, nor is the cover member made of metal.

Frey teaches that it is known to provide legs that are substantially long in order to provide a stronger connection with the tissue. Further, Frey teaches that the legs can be substantially conically shaped in order to prevent migration of the leg out of the tissue. Frey also teaches that the legs may contain central channels (11) to aid in engaging the leg with a deployment tool (14). It would have been obvious to one of ordinary skill in the art to modify the device taught by Mulhauser'772 so that it too has these advantages.

Mulhauser in view of Frey does not teach a leg structure with a central channel that extends substantially the length of the leg.

Small'499 teaches that it is old and well known to provide a leg structure with a central channel (26) in order to engage with a delivery device (Figure 3). It would have been obvious to one of ordinary skill in the art to modify the device of Mulhauser in view of Frey with the teachings of Small so that it too has this advantage.

Claim 22: It has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. Ex parte Pfeiffer, 1962 C.D. 408 (1961).

**Claim 1, 3, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzog et al. (US Patent 6,187,009) in view of Small'499 and Mulhauser'772.**

Claim 1, 3, 9, 16: Herzog'009 discloses a device that contains a body having a frame supporting a solid cover (1), a plurality of elongate leg structures (4) that are a plurality of magnitudes greater than the thickness of the body (see figures) and generally conical (see figure 2). The body contains a cover portion integral with the frame portion. The cover is bowed (see column 2, lines 59-62). further, the cover is bowed (see Figure 2, for example).

Herzog'009 does not teach generally conical legs containing a central channel that is closed at the distal end or an annular frame.

Small'499 teaches that it is old and well known to provide a leg structure with a central channel (26) in order to engage with a delivery device (Figure 3). It would have been obvious to one of ordinary skill in the art to modify the device of Herzog'009 with the teachings of Small so that it too has this advantage.

Mulhauser'772 teaches that it is old and well known to provide an annular shaped body for the purpose providing better structural support (column 4, lines 4-12). It would have been obvious to one of ordinary skill in the art to modify the device taught by Herzog'009 so that it too has this advantage.

### ***Conclusion***

Applicant's amendment of new Claims 21 and 22 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734